

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 25

Date Signed: January 25, 1985

MEMORANDUM

SUBJECT: Direct Implementation Programs -- 4 Programmatic Issues

FROM: Victor J. Kimm, Director
Office of Drinking Water (WH-550)

TO: Holders of Water Supply Guidance Compendium

Thank you for your comments on the draft water supply guidance sent to your offices for review on October 25 (Trax memo - Request for Comments - Proposed Water Supply Guidance). Because of your comments we made several changes to the proposed guidance particularly relating to format.

Hope you had a good Holiday!

Attachment

DIRECT IMPLEMENTATION
PROGRAM POLICY & GUIDANCE

A. PROGRAM RESPONSIBILITIES OF THE PUBLIC WATER SYSTEM VERSUS THE PRIMACY AGENT

POLICY:

IT IS THE RESPONSIBILITY OF THE PUBLIC WATER SYSTEM TO COMPLY WITH THE REQUIREMENTS OF THE SAFE DRINKING WATER ACT AND THE NATIONAL INTERIM PRIMARY DRINKING WATER REGULATIONS.

IT IS THE PRIMACY AGENT'S RESPONSIBILITY TO FOLLOW-UP ON INCIDENTS OF PUBLIC WATER SYSTEM NON-COMPLIANCE AND PROVIDE TIMELY ENFORCEMENT IF THE PUBLIC WATER SYSTEM FAILS TO MEET ITS OBLIGATIONS.

UNDER CONDITIONS WHERE THE INABILITY OF THE WATER SYSTEM TO PROPERLY MONITOR COULD COMPROMISE THE PUBLIC HEALTH IT MAY BE APPROPRIATE FOR THE PRIMACY AGENT TO TEMPORARILY PERFORM SOME OR ALL OF THE REQUIRED SAMPLE COLLECTION AND ANALYSIS.

Guidance:

The Safe Drinking Water Act clearly states it is the responsibility of the public water system to provide "safe" drinking water and comply with the National Interim Primary Drinking Water Regulations (NIPDWR). All EPA drinking water programs in non-primacy States should be implemented in a way that recognizes that it is the public water system's responsibility to comply with the SDWA and NIPDWR's.

It is the primacy agent's responsibility to follow-up on incidents of non-compliance and to provide timely public notification and enforcement if the public water system fails to meet its obligation. Each primacy agent should develop an enforcement strategy which outlines when and what types of non-compliance trigger an enforcement action. The strategy should outline the appropriate primacy agent response.

Some public water systems, because of their size, economic condition and other constraints, are not able to adequately perform all the routine monitoring or any required special monitoring that may be appropriate to protect the public health. This is particularly true when contaminants other than the traditional contaminants (i.e. VOC's, SOC's) must be investigated by sampling and analysis.

If the inability of the water system to properly and adequately monitor compromises the public health, it may be appropriate for the Federal or State primacy agent to perform some or all of the required sample collection and analyses. This posture on the part of the primacy agent should not be allowed to become the status quo, nor should it be applied to systems capable of performing the required monitoring. Rather, it should be viewed as a temporary solution. All monitoring/analytical assistance given by the primacy agent should be linked with technical assistance activities to move the public water systems toward self-sufficiency. It is important that all activities of the primacy agent foster maximum self-sufficiency by public water systems.

If a public water system becomes recalcitrant in moving towards self-sufficiency, the primacy agent should use enforcement, along with technical assistance as a tool to ensure the public water system fully complies with the NIPDWR's and the self-monitoring goal of the SDWA. The primacy agent should enforce against those public water systems whose progress towards self-sufficiency has slowed -- in spite of receiving technical assistance -- and refuses to fully comply with monitoring or reporting requirements.

B. RESOURCE UTILIZATION

POLICY:

FEDERAL RESOURCES SHOULD BE ALLOCATED FIRST TO THOSE ACTIVITIES SPECIFICALLY MANDATED BY THE SAFE DRINKING WATER ACT AND SECONDARILY, FOR ACTIVITIES REQUIRED TO ACCOMPLISH THE GOALS OF THE ACT.

ACTIONS NOT SPECIFICALLY MANDATED OR REQUIRED ARE APPROPRIATE ACTIVITIES IF THEY SUPPORT THE PUBLIC HEALTH AND SYSTEM SELF-SUFFICIENCY GOALS OF THE SAFE DRINKING WATER ACT.

Guidance:

Because resources are limited and thus prevent accomplishing all desired program activities, Headquarters and each Region must cooperate to establish priorities. Each Region should ensure that resources are dedicated first for activities specifically mandated by the SDWA and secondly, those that support and enhance the primacy agent's implementation. The Implementation Regulations outline a number of activities primacy agents should undertake to enhance the primacy agent's implementation.

SDWA Mandated Activities: Section 1413 of the SDWA outlines the requirements for State primacy. These same requirements also apply when the primacy agent is an EPA Region. In addition, Section 1442 encourages EPA technical assistance to encourage State primacy assumption. These activities are:

- Develop adequate enforcement and inspection procedures;
- Keep records/make reports;
- Issue variances and exemptions;
- Develop and maintain emergency plans;
- Give technical assistance to states to develop and establish Federally approved drinking water programs.

Implementation Regulation Activities: In addition to SDWA mandated activities, Section 142.10 of the Implementation Regulations outlines additional activities primacy agents should do to support the goals of the SDWA. They are:

- Maintain an inventory;
- Develop a program of sanitary surveys with priority given to non-complying systems;
- Certify laboratories;
- Develop and maintain a quality assurance program;
- Conduct plan/design review; and
- Enforce against non-complying systems.

Additional Activities: In addition to the above activities, it may be appropriate for the primacy agent to undertake several other activities to support either the public health goal of the Act or its mandated activities. These are:

- Monitor unregulated contaminants;
- Train water supply operators and regulatory personnel;
- Develop effective communications with water supply operators and regulatory agencies; and
- Manage data.

There is a base level of effort that must occur in each Region to ensure that the overall program will be effective. In particular, Regions should ensure that the amount of resources dedicated to base level activities are sufficient to encourage voluntary compliance by public water systems. The ODW encourages regional flexibility to determine which activities to pursue above the base. If the Program Office elects to direct resources away from mandatory and required activities, it should demonstrate that the diversion was necessary to better protect the public health.

The degree to which the above activities utilize available resources will depend upon system compliance rates, State cooperation and the training/education needs of system operators. The ODW will consider these factors, to the extent possible, when developing the resource distribution models. At the national level, the degree to which these highest priority activities utilize available resources will be considered when developing budget proposals.

C. APPROPRIATE FOLLOW-UP TO MONITORING RESULTS

POLICY:

IT IS THE RESPONSIBILITY OF THE PRIMACY AGENT TO IMMEDIATELY RESPOND TO ALL VIOLATIONS AND POTENTIAL VIOLATIONS WHICH HAVE ACUTE HEALTH SIGNIFICANCE.

IF THE PRIMACY AGENT MONITORS OR PARTICIPATES IN A SURVEY FOR UNREGULATED CONTAMINANTS, IT SHOULD PROVIDE APPROPRIATE FOLLOW-UP TO PROTECT THE PUBLIC HEALTH.

Guidance:

One of the goals of the SDWA is the protection of public health through the provision of safe drinking water. Primacy agents and individual public water systems measure progress towards this goal through monitoring for drinking water contaminants and reporting compliance. Primacy agents should respond to violations in a timely manner, particularly those violations with acute health significance^{1/} as well as any preliminary compliance monitoring results which may have a "potential"^{2/} acute health significance.

^{1/} For a list of violations which have acute health significance see "Public Water Systems Compliance Policy," Office of Water, U.S. EPA, January 18, 1984.

^{2/} Because some Regions determine compliance quarterly and PWS's monitor monthly, a positive microbiological sample may not be determined as a violation for several months. For purposes of this Policy, "potential" refers to any positive microbiological result.

It is likewise important that the primacy agent respond to monitoring results from unregulated contaminants which have a public health significance. At a minimum, the primacy agent should be sure that the public water system is aware of the "potential" violation, knows the appropriate steps it must take to protect the health of its consumers, and complies with follow-up monitoring requirements.

While the absence of contaminants in a sample does not mean the water is safe, the presence of a contaminant in excess of the MCL conveys a possible risk of an adverse health effect to consumers. This possible risk is sufficient justification for the primacy agent to require follow-up monitoring and tracking. Follow-up monitoring and tracking is appropriate even for those cases where the apparent presence of the contaminant cannot be reestablished or its cause detected.

D. NON-COMMUNITY WATER SYSTEM LEVEL OF EFFORT

POLICY:

EACH REGION SHOULD DEDICATE A MINIMUM LEVEL OF EFFORT TO REGULATE NON-COMMUNITY WATER SYSTEMS. ANY ACTIVITIES ABOVE THE BASE LEVEL SHOULD BE PRIORITIZED.

Guidance

Non-community water systems may serve large numbers of people on a transient basis. If deficiencies in the quality of water provided by NCWS's occur, the health of numerous people may be adversely affected but remain undetected by the usual disease tracking mechanisms. Consequently, it is important that the primacy agent address NCWS compliance--both monitoring/reporting and MCL compliance. All NCWS's exceeding MCL's should be informed in writing of the violations and remedial actions subsequently required.

Currently resources are allocated to Regions to maintain the NCWS inventory and to follow-up instances of non-compliance. At a minimum, the resources allocated for the NCWS program should be used to implement the non-community program. Regions should be prepared to demonstrate that any deviation from this policy is necessary to effectively deal with higher priority public health concerns.

Given the limited resources currently allocated to the non-community program and the pressing needs associated with the community systems, significant coverage to non-communities requires that NCWS's be ranked and addressed in priority order. In addition, to ensure the greatest degree of voluntary compliance, all non-community systems should be notified periodically of their statutory responsibilities to both provide safe drinking water and to demonstrate this through periodic monitoring.